

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

MICAH ALAN COX

Case No. C-3:13-cv-200

Petitioner,

-v-

Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

ROD JOHNSON
Warden, Madison Correctional
Institution

Respondent.

**ENTRY AND ORDER OVERRULING COX'S OBJECTIONS (Doc. #23)
TO THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATIONS; OVERRULING COX'S OBJECTIONS TO THE
MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT AND
RECOMMENDATIONS (Doc. #27); OVERRULING COX'S OBJECTIONS
TO THE MAGISTRATE JUDGE'S NOTATION ORDER DENYING
COX'S MOTION TO EXPAND THE RECORD (Doc. #29); ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS
AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Docs.
#20 and 25) IN THEIR ENTIRETY; DISMISSING COX'S PETITION FOR
A WRIT OF HABEAS CORPUS WITH PREJUDICE; DENYING ANY
REQUESTED CERTIFICATE OF APPEALABILITY; CERTIFYING
THAT ANY APPEAL OF EITHER THE REPORT AND
RECOMMENDATION, THE SUPPLEMENTAL REPORT AND
RECOMMENDATION OR THE NOTATION ORDER WOULD BE
OBJECTIVELY FRIVOLOUS; AND TERMINATING THIS CASE**

This matter comes before the Court pursuant to pro se Petitioner Micah Alan Cox's ("Cox's") Objections (doc. #23) to Magistrate Judge Michael R. Merz's Report and Recommendations (doc. #20); Cox's Objections (doc. #27) to Magistrate Judge Merz's Supplemental Report and Recommendations (doc. #25) and Cox's Objections (doc. #29) to Magistrate Judge Merz's Notation Order denying Cox's Motion To Expand the Record. In both the Report and Recommendations and Supplemental Report and Recommendations, Magistrate

Judge Merz recommends that Cox's Petition for a Writ of Habeas Corpus be denied with prejudice. Magistrate Judge Merz also recommends that Cox be denied any certificate of appealability and that this Court certify to the Sixth Circuit that any appeal would be objectively frivolous. In the Notation Order, Magistrate Judge Merz denied Cox's Motion To Expand the Record because it was untimely.

Cox has filed Objections to both the Report and Recommendations and the Supplemental Report and Recommendations. The time has run and the Warden has not responded to Cox's Objections to the Report and Recommendations and Supplemental Report and Recommendations. Cox has also objected to the Magistrate Judge's Notation Order denying his Motion To Expand the Record. Although the time has not run, the Warden has not yet responded to Cox's objections to the Notation Order..

Regarding the Report and Recommendations and Supplemental Report and Recommendations, as required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Cox's Objections to the Magistrate Judge's Report and Recommendations and Cox's Objections to the Magistrate Judge's Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Report and Recommendations and Supplemental Report and Recommendations are adopted in their entirety.

The Magistrate Judge's Notation Order denying Cox's Motion To Expand the Record is a non-dispositive order. Federal Rule of Civil Procedure 72(a) provides that a district court must modify or set aside any part of a non-dispositive order that is clearly erroneous or is contrary to law. *American Coal Sales Co. v. Nova Scotia Power, Inc.*, No. 2:06-cv-94, 2009 WL 467576 at

*13 (S.D. Ohio Feb. 23, 2009)(citing Fed. R. Civ. P. 72(a)). Thus, a “clearly erroneous” standard applies to factual findings made by the magistrate judge. *Id.* Legal conclusions are reviewed under the more lenient “contrary to law” standard. *Id.* Both of these standards provide considerable deference to the determinations made by the magistrate judge. *Id.* (citing *In re Search Warrants Issued August 29, 1994*, 889 F. Supp. 296, 298 (S.D. Ohio 1995)).

A magistrate judge’s factual findings are considered clearly erroneous if, on the entire evidence, the court is left with the definite and firm conviction that a mistake has been committed. *Id.* The test is whether there is evidence in the record to support the magistrate judge’s finding and whether the magistrate judge’s construction of that evidence is reasonable. *Id.* (citing *Heights Community Congress v. Hilltop Realty Corp.*, 774 F.2d 135, 140 (6th Cir. 1985), *cert. denied*, 475 U.S. 1019 (1986)). A legal conclusion is contrary to law if the court determines that the magistrate judge’s legal conclusions “contradict or ignore applicable precepts of law....” *Id.*(citing *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992)).

In this case, this District Judge has reviewed the record and finds that Magistrate Judge’s Notation Order is not clearly erroneous nor is it contrary to law. Therefore, Cox’s Objections (doc. #29) to the Magistrate Judge’s Notation Order regarding Cox’s Motion To Expand the Record are OVERRULED.

Cox’s Petition for a Writ of Habeas Corpus is denied with prejudice. Further, Cox is denied a certificate of appealability. In addition, any appeal of the denial of Cox’s Petition for a Writ of Habeas Corpus or of the denial of Cox’s Motion To Expand the Record would be objectively frivolous. Finally, the captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division,

at Dayton.

DONE and ORDERED in Dayton, Ohio, this Twenty-Fifth Day of March, 2014.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Micah Alan Cox at his last address of record